

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

LAURENCE BARKER,

Plaintiff,

vs.

No. CV 18-855 KG/LF

CLEAN ENERGY EXPERTS LLC  
and Jane Does 1-10,

Defendants.

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT

This matter comes before the Court on Plaintiff Laurence Barker's Motion for Leave to File Amended Complaint, filed May 9, 2019. (Doc. 20). Barker timely filed his Motion after the Court's April 29, 2019, Amended Memorandum Opinion and Order granted then-Defendant Sunrun Inc.'s Motion to Dismiss and afforded Barker fourteen (14) days to file a motion for leave to file an amended complaint. (Doc. 19). In his proposed Amended Complaint, Barker adds factual allegations and substitutes Clean Energy Experts LLC as the named defendant. (Doc. 20-1). Sunrun Inc. (Sunrun) filed a response to Barker's Motion on May 23, 2019. (Doc. 21). Sunrun does not "formally oppose" the Motion. (*Id.*) at ¶ 3. Barker filed his reply on June 1, 2019. (Doc. 22). Having reviewed the briefing, the record, and the applicable law, and seeing no opposition from Sunrun, the Court grants Barker's Motion for Leave to File Amended Complaint, amends the caption of the case to that listed on this Memorandum Opinion and Order, and dismisses Sunrun from the case without prejudice.

Under Rule 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave." As the Tenth Circuit has explained,

Rule 15(a) provides that leave to amend "shall be freely given when justice so requires." Refusing leave to amend is generally only justified upon a showing of

undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment.

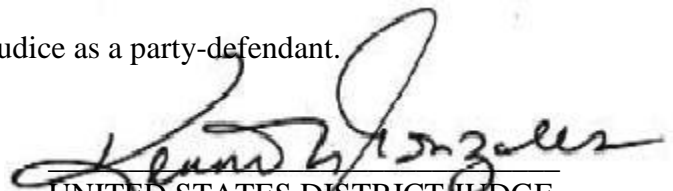
*Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365-66 (10th Cir. 1993) (citations omitted).

Here, the Court dismissed Barker's claims against Sunrun without prejudice on April 29, 2019. (Doc. 19). However, because the Court gave Barker time to move to file an amended complaint, the Court did not dismiss Sunrun as a party-defendant in this case. As the only active defendant, Sunrun stated, in writing, that it does not oppose Barker's motion for leave to amend. (Doc. 21) at ¶ 3.

At this stage, the Court finds that justice requires granting leave to amend. By granting leave to amend, the Court is not deciding whether Barker's proposed Amended Complaint might be subject to dismissal for any reason.

IT IS, THEREFORE, ORDERED that

1. Plaintiff Laurence Barker's Motion for Leave to File Amended Complaint, filed May 9, 2019 (Doc. 20) is granted;
2. Plaintiff will file his Amended Complaint within five (5) calendar days from the date of entry of this Memorandum Opinion and Order;
3. The caption of the case will be amended to reflect the caption on this Memorandum Opinion and Order;
4. Plaintiff will serve Clean Energy Experts LLC within the time prescribed by Rule 4;  
and
5. Sunrun Inc. is dismissed without prejudice as a party-defendant.

  
UNITED STATES DISTRICT JUDGE